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SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM 1938.

No. 368

RAY L. CHESEBRO,

Appellant,

vs.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT; BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, as the Board of Supervisors of the Los Angeles County Flood Control District; JOHN ANSON FORD, LELAND M. FORD, HERBERT C. LEGG, ROGER W. JESSUP and GORDON L. MCDOUGALL, as Members of and constituting the Board of Supervisors of the County of Los Angeles, and *ex officio* the Board of Supervisors of the Los Angeles County Flood Control District,

Appellees.

APPELLANT'S BRIEF.

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Appellees.

APPELLANT'S BRIEF.

STATEMENT OF THE CASE.

Appellant Ray L. Chesebro has taken this appeal from a judgment of the Supreme Court of the State of California denying the issuance of a writ of mandate. (*City of Los Angeles, et al., petitioners, v. Los Angeles County Flood Control District, et al., respondents,* not as yet officially reported but unofficially reported in 80 Pac. (2d) 479, and 95 Cal. Dec. 525.)

(A) Proceedings in State Court.

The case was before the Supreme Court of the State of California on an original proceeding for a writ of mandate. Appellant and the City of Los Angeles, a municipal corporation of the State of California, were the petitioners. The writ was sought in order to compel appellees to levy special assessments throughout the Los Angeles County Flood Control District, in conformity with the provisions of the Los Angeles County Flood Control District Act (Stats. 1915, p. 1502)* as that statute existed prior to its amendment by the state legislature in 1937 (Stats. 1937, p. 1763). The petition for the writ was based upon the ground that the 1937 amendment to the Los Angeles County Flood Control District Act was in violation of and repugnant to the Constitution of the United States in that it deprived petitioners of their property without due process of law as guaranteed to them by Article XIV of the Amendments to the Constitution of the United States. [R. 3.] The appellees demurred generally to the petition and the cause was submitted upon the pleadings, there being no questions of fact involved. [R. 14, 20.]

The City of Los Angeles also appealed from the judgment of the Supreme Court of the State of California, but the appeal as to it was ordered dismissed by this Honorable Court on October 17, 1938, "for the want of a substantial federal question."

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*Reference is to California Statutes unless otherwise specified.

(B) Question Presented.

The question presented is whether appellant has been deprived of his property without due process of law, in violation of the provisions of paragraph 1 of article XIV of the Amendments to the Constitution of the United States, by the action of a local administrative board in transferring to a special assessment district, (Los Angeles County Flood Control District) in which appellant is a property owner, the works, together with the debts, obligations and cost of maintenance, of certain other special assessment districts, (drainage districts) under the purported authority of a statute which does not provide for notice to, and an opportunity for, property owners of the district to which the debts and obligations are transferred to be heard on the question of whether the transfer will be of special benefit to the lands of such district.

(C) Transfer of Drainage District Works and Obligations to the Los Angeles County Flood Control District.

On December 1, 1937, the Board of Supervisors of the County of Los Angeles, as the governing body of eleven separate drainage districts, transferred these districts to the Los Angeles County Flood Control District, and the Board, as the governing body of the Los Angeles County Flood Control District, accepted the transfer on behalf of the Flood Control District. [R. 2, 5.] Thereupon, by operation of law (Stats. 1937, p. 1763, to which specific reference is hereinafter made) the outstanding obligations of these drainage districts became the obligation of the Los Angeles County Flood Control District.

(D) Statutes Involved, and Formation of Special Assessment Districts Pursuant Thereto.

The facts in this case revolve around the provisions of the Los Angeles County Flood Control District Act (Stats. 1915, p. 1502), its amendment in 1937 (Stats. 1937, p. 1763), and two drainage district acts (Stats. 1903, p. 354; Stats. 1919, p. 731) under which the eleven drainage districts transferred to the Los Angeles County Flood Control District were organized.

(1) Los Angeles County Flood Control District Act—Formation of Los Angeles County Flood Control District.

Los Angeles County has an area of approximately 4000 square miles. In 1915 the state legislature created a special assessment district comprising almost the entire county and known as the Los Angeles County Flood Control District (Stats. 1915, p. 1502). The objects and purposes of the act creating the district are set forth in section 2, as amended in 1931 (Stats. 1931, p. 1657), as follows:

> "* * * to provide for the control and conservation of the flood, storm and other waste waters of said district, and to conserve such waters for beneficial and useful purposes by spreading, storing, retaining or causing to percolate into the soil within said district, or to save or conserve in any manner all or any of such waters, and to protect from damage from such flood or storm waters, the harbors, waterways, public highways and property in said district. * * *."

Section 2 also contains an enumeration of the powers of the district. While this section has been amended

from time to time for the purpose of conferring powers incidental to the carrying out of the purposes of the act, the following indicates the general scope of the powers conferred upon the governing board of the district and they have remained the same throughout the various amendments:

> "4. To take by grant, purchase, gift, devise or lease, hold, use, enjoy, and to lease or dispose of real or personal property of every kind within or without the district necessary to the full exercise of its powers.
>
> "5. To acquire or contract to acquire, lands, rights of way, easements, privileges and property of every kind, and construct, maintain and operate any and all works or improvements within or without the district necessary or proper to carry out any of the objects or purposes of this act, and to complete, extend, add to, repair, or otherwise improve, any works or improvements acquired by it as herein authorized. * * *
>
> "7. To incur indebtedness and to issue bonds in the manner herein provided.
>
> "8. To cause taxes to be levied and collected for the purpose of paying any obligation of the district in the manner hereinafter provided."

Provision is made, in section 4 of the Act, for hiring engineers to make a report on the best plan to control and conserve the flood and storm waters of the district, and, under section 6, the Board of Supervisors, upon adoption of such report, are authorized to "call a special election and submit to the qualified electors of said district the proposition of incurring a bonded debt in the amount and for the purposes stated in said report." A special

election was, in fact, held and the issuance of bonds was approved.

The legality of the bond issue and the formation of the district were sustained in *Los Angeles County Flood Control District v. Hamilton* (1917), 177 Cal. 119, wherein it was declared that "the scheme of the act is one of local improvement," and that levies made pursuant to the provisions of the Act, though denominated a tax, are, in fact, special assessments as distinguished from taxes.

Section 9 of the Act provides for the payment of the bonds voted by an annual assessment upon all the real property in the district, and section 14 provides for a like additional assessment, not to exceed ten cents per hundred, to be used for maintenance for the ensuing year or to carry out any of the objects or purposes of the Act.

Under section 16 of the Act the Board of Supervisors is given power to acquire:

> "either within or without the boundaries of said district, by purchase, condemnation, donation, or other lawful means, in the name of said district, from private persons, corporations, reclamation districts, swamp land districts, levee districts, protection districts, *drainage districts*, irrigation districts, or other public corporations or agencies or districts, all lands, rights of way, easements, property or materials *necessary or useful* for carrying out any of the purposes of this act; * * * to compensate any reclamation district, protection district, *drainage district*, irrigation district, or other district for any right of way, easement or property taken over or acquired by said Los Angeles County Flood Control District

as a part of its work of flood control or conservation or protection provided for in this act, and any such reclamation district, protection district, drainage district, irrigation district or other district or public corporation or agency is hereby given power and authority to distribute such compensation in any manner that may be now or hereafter allowed by law; * * * (Italics ours) *provided, further,* that nothing in this act contained shall be deemed to authorize said board of supervisors to raise money for said district by any method or system other than that by the issuing of bonds, or the levying of a tax upon the assessed value of all the real property in said district in the manner in this act provided."

(a) *1937 Amendment to Los Angeles County Flood Control District Act Authorizing Transfer of Drainage Districts to Los Angeles County Flood Control District.*

In 1937, section 13½ was added to the Act (Stats. 1937, p. 1763). This section provides, in part:

"The board of supervisors of said Los Angeles County Flood Control District, by a four-fifths vote, may accept on behalf of said district a transfer and conveyance of all, but not less than all, storm drain improvements, drainage improvements or drainage systems lying within the territorial limits of the flood control district and within any of the following described classes, to wit:

"1. Those which were constructed under the jurisdiction, control or supervision of the board of supervisors of the county of Los Angeles, and which are under the jurisdiction of said board;

"2. Those which were constructed by or for the county of Los Angeles or any drainage district within

said county or by or for the Los Angeles County Flood Control District;

"3. Those constructed pursuant to the provisions of an act entitled 'An act to promote the drainage of wet, swamp and overflowed lands, and to promote the public health in communities in which they lie,' approved March 21, 1903, as amended, and those which have been constructed pursuant to the provisions of the Drainage District Improvement Act of 1919, as amended, prior to January 1, 1937;

"4. Those within any incorporated city, town or municipality of the county of Los Angeles whose legislative body has transferred and conveyed such storm drain improvements, drainage improvements or drainage systems to said flood control district pursuant to the provisions of any act of the State of California authorizing such transfer and conveyance.

"Upon the transfer or conveyance to said flood control district of any such storm drain improvements, drainage improvements or drainage systems, to pay the cost and expense of the construction of which bonds of any drainage improvement district have been issued, said flood control district shall thereupon be and become liable for the payment of the principal upon the bonds of such drainage improvement districts maturing subsequent to the date of such conveyance and upon the indebtedness of such drainage improvement district represented by interest coupons maturing subsequent to such date of transfer. The board of supervisors of the flood control district shall levy a special tax each year upon the taxable real property in said flood control district sufficient to pay the principal and interest on the bonds of said drainage districts as such principal and interest become due subsequent to the date of such conveyance and transfer. Such tax shall

be levied and collected on said real property at the time and in the same manner as the general tax levy for county purposes, and when collected shall be paid into the county treasury of said county of Los Angeles to the credit of said district fund and shall be used for the payment of the principal and interest on said drainage district bonds and for no other purpose."

At the same session, the legislature passed a statute (Stats. 1937, p. 1761), complementing section 13½ of the Los Angeles County Flood Control Act, authorizing to be transferred, under identical conditions and limitations, that which section 13½ authorizes to be accepted. It was under the purported authority of section 13½ that the Board of Supervisors transferred the eleven drainage districts to the Los Angeles County Flood Control District as pointed out by the Supreme Court of California in its decision. [R. 20.]

(2) The Drainage District Statutes—Formation of Drainage Districts.

Subsequent to the formation of the Los Angeles County Flood Control District the eleven drainage districts were organized by the County Board of Supervisors upon petition of property owners within the respective districts. Drainage Districts Nos. 1 and 3 were organized pursuant to the provisions of the Statutes of 1903, page 354 [R. 2], and Drainage Districts Nos. 8, 9, 11, 17, 22, 23, 25, 26 and 29 were organized under the provisions of the Drainage District Improvement Act of 1919 (Stats. 1919, p. 731). [R. 2.] The 1903 Statute was superseded by the Drainage District Improvement Act of 1919. Both

are general statutes by which county boards of supervisors are authorized, upon petition and *proper notice and hearing,* to form individual special assessment districts for drainage purposes.

Specific consideration need only be given to the Drainage District Improvement Act of 1919 (Stats. 1919, p. 731). That Act not only now governs districts formed thereunder but also those districts organized under the 1903 Statute. The Act provides that owners of land within a district which contains lands needing drainage may file with the board of supervisors of the county in which such lands are situated a petition for the establishment of necessary drains, giving the approximate boundary of the district proposed to be benefited.

Section 1 of the Act provides, in part, that:

> "* * * If said petition is granted the board of supervisors shall instruct the county surveyor to prepare plans and specifications for the improvement. The plans for the improvement shall contain a map or plat of the district on which shall be clearly shown in full detail the exterior boundaries of the district. *The boundaries of the district* as shown on said map or plat may include more or less territory than that indicated by the petition and *shall include all the lands which in the opinion of the county surveyor will be benefited by the improvement contemplated.* Said boundaries may be changed by the board of supervisors at the hearing on the resolution of intention, as provided in section 6 of this act to exclude lands which in its judgment will not be benefited by the improvement." (Italics ours.)

The Board of Supervisors is given power to pass on the extent of the boundaries of the district and may

exclude lands not found to be benefited by the proposed improvement. However, the Board of Supervisors is expressly prohibited, under section 9 of the Act, from changing the boundaries of the district as shown on the county surveyor's map so "as to include within the district any territory not within the boundaries as shown on the map or plat."

Provision is made for notice and an opportunity to object to the doing of the proposed work and the levy of the assessment therefor.

(E) Threatened Levy of Special Assessments on Lands Throughout Los Angeles County Flood Control District.

Pursuant to the provisions of section 13½ of the Los Angeles County Flood Control Act (Stats. 1937, p. 1763), the Board of Supervisors of the Flood Control District threaten to levy each year special assessments against all real property situated within the Los Angeles County Flood Control District, including real property which is situated outside the exterior boundaries of the drainage districts transferred to the Flood Control District, sufficient to meet the obligations incurred by such drainage districts. [R. 3.]

(F) Appellant's Theory of the Case.

Appellant contends that the action of appellees deprives him of his property without due process of law, in violation of the provisions of paragraph 1 of article XIV of the Amendments to the Constitution of the United States, in that appellees have violated the following elementary principles governing the levy of special assessments for local improvements:

1. A special assessment levied without determination of special benefits to the property assessed is void.
2. Where the question of the boundaries of the district to be assessed is left to the determination of a local administrative board, it is essential that property owners whose property is to be assessed shall be given a hearing upon the question as to whether or not the property included in the district would be benefited by the proposed improvement and the amount of the assessment to be charged against the property.
3. The establishment of an assessment district is a declaration that the only lands which will be benefited by the proposed improvement are the lands within the district.
4. Lands within the limits of a district can be assessed only for the benefits conferred on *such lands* and not for benefits on lands of another district.
5. Property which is not and cannot be benefited may not be included within a district in order that it may pay for benefits accruing to other property.

Applying these fundamental principles to the facts of the case at bar, it is appellant's contention that while the Los Angeles County Flood Control District was created by the legislature and the question of special benefit to the lands within the district formed by the contemplated local improvement was thereby determined by that body, yet this does not permit the legislature to later amend the act so as to grant unlimited discretionary power to a local administrative board to acquire on behalf of the Flood Control District various types of

structures, including those of special assessment drainage districts created by a local administrative board upon petition of property owners within the respective districts, the validity of whose organization is based upon the fact that they serve a purpose different from that of the Flood Control District and are of benefit only to limited areas within the Flood Control District, without the legislature's providing for notice and an opportunity for property owners within the Flood Control District to be heard upon the question whether a transfer of these structures will be of special benefit to the lands within the Flood Control District before the outstanding obligations of the drainage districts may be met by assessments upon the lands of the entire Flood Control District.

SPECIFICATION OF APPELLANT'S ASSIGNMENT OF ERRORS.

Appellant urges the following assignment of errors, as set forth in his petition for the allowance of his appeal. [R. 17.]

I.

The Supreme Court of the State of California erred in holding that the rights of appellant secured and protected by the provisions of section 1 of article XIV of the Amendments to the Constitution of the United States were not violated by a statute which authorizes the managing board of a special assessment district (Los Angeles County Flood Control District) created by the legislature to exercise discretionary power and accept a

transfer of the works and assume the obligations of other special assessment districts (drainage districts) subsequently created by the County Board of Supervisors upon petition of landowners within such other special assessment districts (drainage districts) without requiring that the owners of taxable real property within the special assessment district (Los Angeles County Flood Control District) proposing to accept the transfer be given an opportunity to be heard on the question of whether such transfer and assumption of obligation will be of benefit to the taxable real property of the district.

II.

The Supreme Court of the State of California erred in holding that by designating the classes of structures which might be transferred to the Los Angeles County Flood Control District at the discretion of the Board of Supervisors of Los Angeles County (the managing board of the Los Angeles County Flood Control District) it is to be presumed that the legislature concluded that the Los Angeles County Flood Control District would be benefited by the structures of such classes if and when they should be acquired on behalf of the Flood Control District.

III.

The Supreme Court of the State of California erred in holding that section 13½ of the Los Angeles County Flood Control District Act (Stats. of 1937, p. 1763) refers to specific classes of structures, the nature of which indicates their relative usefulness for the purposes of the Flood Control District without the necessity of any express declaration to such effect.

ARGUMENT.

Appellant relies upon the following points, as set forth in his Statement of Points to Be Relied Upon. [R. 30.]

POINT I.

The Supreme Court of the State of California Erred in Holding That the Rights of Appellant Secured and Protected by the Provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States Were Not Violated by a Statute Which Authorizes the Managing Board of a Special Assessment District (Los Angeles County Flood Control District, Theretofore Created by the Legislature) to Exercise Discretionary Power and Accept a Transfer of the Works and Assume the Obligations of Other Special Assessment Districts (Drainage Districts Subsequently Created by the County Board of Supervisors Upon Petition of Landowners Therein) Without Requiring That the Owners of Taxable Real Property Within the Special Assessment District (Los Angeles County Flood Control District) Proposing to Accept the Transfer Be Given an Opportunity to Be Heard on the Question of Whether Such Transfer and Assumption of Obligation Will Be of Benefit to the Taxable Real Property of the District.

Appellant contends that section 13½ of the Los Angeles County Flood Control District Act (Stats. 1937, p. 1763), purporting to authorize the transfer of drainage districts to the Los Angeles County Flood Control District by the managing boards of the respective districts, is void for want of provision therein for giving notice to property owners within the Flood Control District and an opportunity for them to be heard on whether such transfer to,

and consequent assumption of burdens by, the Flood Control District is of special benefit to the lands of the Flood Control District, for the reason: (a) that the Los Angeles County Flood Control District is a special assessment district formed for local improvement; (b) that special assessments levied without determination of special benefit to the lands assessed are void; (c) that where the boundaries of a special assessment district are not determined by the legislature, property owners must be given notice and an opportunity to be heard on the question of whether special assessments will be of special benefit to the lands assessed; and (d) that, with respect to the transfer of the drainage districts to the Flood Control District, the boundaries of the district to be assessed for the outstanding obligations of the drainage districts were not determined by the legislature, but by a local administrative board.

(A) THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT IS A SPECIAL ASSESSMENT DISTRICT FORMED FOR LOCAL IMPROVEMENT.

Upon the formation of the Los Angeles County Flood Control District by the legislature, in 1915, the people of the district voted in favor of the issuance of bonds to defray the cost of the improvements recommended in the engineers' report. The validity of the Act and the proceedings for the holding of the bond election were sustained by the Supreme Court of California in the case of *Los Angeles County Flood Control District v. Hamilton* (1917), 177 Cal. 119. In that case, in pointing out that there was nothing upon which it might be said that the legislature arbitrarily included lands within the district and that the levy to be made for payment of the cost of con-

structing and maintaining the improvements was a special assessment as distinguished from a general tax, it was said, commencing at pages 123, 128 and 129:

"* * * The scheme of the act is one of local improvement. The warrant and justification for charging the cost of such improvement upon designated lands is to be found, in theory at least, in the benefit to be derived by the lands assessed from the contemplated work. * * *

"It is next contended that the act is void because it provides for the raising of funds to pay for the work by means of a tax instead of by a special assessment. If such be the case, the act is a palpable violation of the provision of the state constitution, requiring that all property be taxed in proportion to its value. (Article XIII, section 1.) Since the act charges only the real, and not the personal, property in the district, it clearly violates this fundamental mandate, if the burden is a tax, strictly speaking. The interveners point to the fact that the legislature has used the word 'tax' throughout the act, and does not anywhere refer to the charge as an assessment. Furthermore, such 'tax' is to be levied and collected in the same manner, by the same machinery, and at the same time as general taxes. These facts are not, however, conclusive. The word 'tax' is used, with equal propriety, in two distinct senses. In its broad meaning the word includes both general taxes and special assessments. * * *

"* * * Taking, as, under the settled rule of constitutional law, we must, that construction which will uphold the act, we conclude that the legislature must have intended to use the meaning which would admit of the charge being construed as a special assessment. * * *"

To the same effect, see: *City of Inglewood v. County of Los Angeles*, 207 Cal. 697, and *Los Angeles Railway Corp. v. Los Angeles County Flood Control District*, 78 Cal. App. 173.

It is therefore apparent that the Los Angeles County Flood Control District is a special assessment district formed for local improvement and that the levies made by the district are special assessments as distinguished from general tax levies.

(B) SPECIAL ASSESSMENTS LEVIED WITHOUT DETERMINATION OF SPECIAL BENEFIT TO THE LANDS ASSESSED ARE VOID.

In order that special assessments may be validly levied there must be a determination that the lands assessed receive some special benefit and a special assessment levied without a determination of this question of special benefit is void. The invalidity of an assessment for local improvements because of the absence of a determination of special benefit to the land assessed, though the method of assessment would have been valid if based on a determination of special benefit, is vividly illustrated by the decision of this Honorable Court in *Village of Norwood v. Baker* (1898), 172 U. S. 269. The statute under consideration in that case provided, in part, that, in the event the improvement of streets or highways is financed by special assessments, as distinguished from a general tax, the cost (page 272):

> "* * * shall be assessed by the council on the abutting and such adjacent and contiguous or other benefited lots and lands in the corporation, *either* in proportion to the benefits which may result from the

> improvement, *or* according to the value of the property assessed, *or* by *the front foot of the property bounding and abutting upon the improvement,* * * *." [Italics by the Court.]

A street was opened through a tract of land, and, pursuant to the statute, the cost of the land condemned, plus the cost of the improvement and the proceedings, were assessed against the land through which the street was opened. In holding that the assessment was void in that it was not levied with regard to special benefit to the land assessed, this Honorable Court pointed out that special benefit is the only basis upon which special assessments may be upheld, and that (page 278):

> "Undoubtedly abutting owners may be subjected to special assessments to meet the expenses of opening public highways in front of their property—such assessments, according to well-established principles, resting upon the ground that special burdens may be imposed for special or peculiar benefits accruing from public improvements. * * *"

(Pages 285-6):

> "In *Thomas v. Gain*, 35 Mich. 155, 162 [24 Am. Rep. 535], Chief Justice Cooley, speaking for the supreme court of Michigan, said: 'It is generally agreed that an assessment levied without regard to actual or probable benefits is unlawful, as constituting an attempt to appropriate private property to public uses. This idea is strongly stated in *The Tide-Water Co. v. Coster*, 18 N. J. Eq. 519 [90 Am. Dec. 634], which has often been cited with approval in other cases. * * *"

(Pages 290-1):

"* * * It thus appears that the statute authorizes a special assessment upon the bounding and abutting property by the front foot for the entire cost and expense of the improvement, without taking special benefits into account. And that was the method pursued by the village of Norwood. The corporation manifestly proceeded upon the theory that the abutting property could be made to bear the whole cost of the improvement, whether such property was benefited or not to the extent of such cost.

"It is said that a court of equity ought not to interpose to prevent the enforcement of the assessment in question, because the plaintiff did not show nor offer to show by proof that the amount assessed upon her property was in excess of the special benefits accruing to it by reason of the opening of the street. This suggestion implies that if the proof had showed an excess of cost incurred in opening the street over the special benefits accruing to the abutting property, a decree might properly have been made enjoining the assessment to the extent simply that such cost exceeded the benefits. We do not concur in this view. As the pleadings show, the village proceeded upon the theory, justified by the words of the statute, that the entire cost incurred in opening the street, including the value of the property appropriated, could, when the assessment was by the front foot, be put upon the abutting property, irrespective of special benefit. The assessment was by the front foot and for a specific sum representing such cost, and that sum could not have been reduced under the ordinance of the village even if proof had been made that the costs and expenses assessed upon the abutting property exceeded the special benefits. The assessment was in itself an illegal one because it rested upon a basis that excluded any consideration of benefits. * * *"

In citing *Village of Norwood v. Baker (supra)*, appellant is fully aware of what has been said in subsequent decisions concerning the front foot method of assessment. However, the principle announced in that case, that (page 291):

> "* * * The assessment was in itself an illegal one because it rested upon a basis that excluded any consideration of benefits * * *"

has been reaffirmed repeatedly by this Honorable Court in the following cases:

Martin v. District of Columbia (1906), 205 U. S. 135, 140, 141;

French v. Barber Asphalt Paving Co. (1900), 181 U. S. 324, 345;

Wright v. Davidson (1900), 181 U. S. 371, 384, 385;

Houck v. Little River Drainage Dist. (1915), 239 U. S. 254, 265;

Myles Salt Co. v. Board of Com'rs (1915), 239 U. S. 478, 485;

Gast Realty Co. v. Schneider Granite Co. (1915), 240 U. S. 55, 59;

Hancock v. City of Muskogee (1918), 250 U. S. 454, 458.

Therefore, before lands within the Los Angeles County Flood Control District could be subject to the valid levy of special assessments to defray the outstanding indebtedness and the cost of maintenance of the works and improvements transferred from the drainage districts to the

Flood Control District it is essential that it be determined, in an appropriate manner by a competent body, that such works and improvements are of special benefit to the lands lying within the Flood Control District and outside the boundaries of the respective drainage districts.

(C) WHERE THE BOUNDARIES OF A SPECIAL ASSESSMENT DITRICT ARE NOT DETERMINED BY THE LEGISLATURE, PROPERTY OWNERS MUST BE GIVEN NOTICE AND AN OPPORTUNITY TO BE HEARD ON THE QUESTION OF WHETHER THE SPECIAL ASSESSMENTS WILL BE OF SPECIAL BENEFIT TO THE LANDS ASSESSED.

It is well settled by the decisions of this Honorable Court that due process of law requires that, where the fixing of the boundaries of a special assessment district is left to a local quasi-judicial or administrative board, property owners whose property is to be assessed shall be given a hearing upon the question as to whether or not their lands will be benefited by the improvement for which they are to be assessed.

In *Fallbrook Irrigation Dist. v. Bradley* (1896), 164 U. S. 112, this Honorable Court had under consideration the provisions of a statute of the state of California authorizing the creation of irrigation districts upon petition of property owners and an election held in the proposed district by the county board of supervisors. One of the grounds of attack upon the statute was "that under the act the landowner has no right to demand and no opportunity is given him for a hearing upon the question whether his land is or can be benefited by irrigation as proposed" (p. 156). In view of the fact that the statute in effect provided for a hearing upon notice by the board of super-

visors as to what lands would be benefited by the proposed system of irrigation, and required that the board include all lands to be benefited and exclude lands which would not be benefited by the proposed improvement, and that an opportunity was afforded to test the sufficiency of the petition, and that a hearing on the valuation and assessment of his land was also provided for, this court concluded that "the act provides for a hearing of the landowner both as to the question whether his land will be benefited by the proposed irrigation, and when that has been decided in favor of the benefit, then upon the question of the valuation and assessment of and upon his land included in the district" (p. 175). In considering the necessity for notice and an opportunity to be heard on the question of benefit to lands within a special assessment district, this court enunciated the following rule at pages 174 and 175:

> "* * * The legislature, when it fixes the district itself, is supposed to have made proper inquiry, and to have finally and conclusively determined the fact of benefits to the land included in the district, and the citizen has no constitutional right to any other or further hearing upon that question. The right which he thereafter has is to a hearing upon the question of what is termed the apportionment of the tax, i. e., the amount of the tax which he is to pay. *Paulsen v. Portland*, 149 U. S. 30-41 [37:637-641]. But when as in this case the determination of the question of what lands shall be included in the district is only to be decided after a decision as to what lands described in the petition will be benefited, and the decision of that question is submitted to some tribunal (the board of supervisors in this case), the parties whose lands are thus included in the petition are entitled to a

hearing upon the question of benefits, and to have the lands excluded if the judgment of the board be against their being benefited. *Unless the legislature decide the question of benefits itself, the landowner has the right to be heard upon that question before his property can be taken.* This, in substance, was determined by the decisions of this court in *Spencer v. Merchant,* 125 U. S. 345, 356 [31:763, 767], and *Walston v. Nevin,* 128 U. S. 578 [32:544]." [Italics ours.]

This rule has been reaffirmed in the following cases:

Londoner v. City and County of Denver (1907), 210 U. S. 373, 385

Browning v. Hooper (1925), 269 U. S. 396, 405;

Embree v. Kansas City etc. Road District (1915), 240 U. S. 242, 247;

Turner v. Wade (1920), 254 U. S. 64, 68;

Hancock v. City of Muskogee (1918), 250 U. S. 454, 458;

St. Louis & Kansas City Land Co. v. Kansas City (1915), 241 U. S. 419, 430;

Soliah v. Heskin (1911), 222 U. S. 522, 524.

(1) *The Board of Supervisors of the Los Angeles County Flood Control District Is an Administrative Board and Does Not Exercise Legislative Power.*

The Los Angeles County Flood Control District was formed by the legislature and under section 3 of the Act (Stats. 1915, p. 1502) the Board of Supervisors of the County of Los Angeles is made *ex officio* the governing board of the district. The drainage districts were formed

upon petition of property owners within the respective drainage districts and under the Drainage District Improvement Act of 1919 (Stats. 1919, p. 731) the Board of Supervisors of the County in which such a district is created, or has been created under the provisions of the 1903 Act (Stats. 1903, p. 354), is the governing board of the district. Under such circumstances the action of the Board of Supervisors of the county as the governing board of the respective special assessment districts is that of an administrative board as distinguished from a legislative body exercising delegated legislative power, and the Supreme Court of California has in effect so held in the case at bar and in the following cases:

Los Angeles County Flood Control District v. Hamilton (1917), 177 Cal. 119;

Miller & Lux v. Board of Supervisors (1922), 189 Cal. 254;

People v. Van Nuys Lighting District (1916), 173 Cal. 792;

Anaheim Sugar Co. v. County of Orange (1919), 181 Cal. 212, 221;

See, also:

In re Orosi Public Utility District (1925), 196 Cal. 43, 51, 52.

This Honorable Court has likewise so held in:

Fallbrook Irr. Dist. v. Bradley (1896), 164 U. S. 112.

(2) *No Hearing Is Afforded Property Owners on the Question of Benefits or the Amount of the Assessments Before They Are Fixed and Determined and Become a Lien Upon the Lands Assessed.*

Section 13½ provides that assessments thereunder "shall be levied and collected on said real property at the time and in the said manner as the general tax levy for county purposes," which is the same mode as provided in the statute as originally enacted, as pointed out in *Los Angeles Railway Corp. v. Los Angeles County Flood Control District* (1926), 78 Cal. App. 173, wherein it is said, at page 183:

> "By sections 10 and 14 of the act it is provided that these assessments shall be levied and collected 'at the time and in the same manner as the general tax levy for county purposes,' and, by section 11, all the provisions of the Political Code relating to the '*manner* of levying, assessing, equalizing, and collecting of taxes' are adopted and made a part of the act. The evident meaning of these provisions of the act is that, although the levy is an assessment for benefits as distinguished from a general tax, the *machinery* for the imposition and collection of the charge is the same as that provided for in the case of general taxes. Summarizing in the light of the decision in the Hamilton case, the situation is this: The legislature has created a special taxing district and has declared that all the real property in the District (with certain unimportant exceptions) will be benefited by the proposed improvement. For the purpose of raising funds it has authorized the supervisors to assess all this real property and has declared that the bonds issued by the District shall be a lien upon 'all the real property

in the District.' For the purpose of convenience to the owners of such property, as well as to the county officials, it has provided that these assessments shall be levied and collected in the same manner and at the same time as general taxes for county purposes. The adoption of this general taxing machinery, however, does not change the character of the charge which is imposed as a special assessment for benefits and the other provisions of the act plainly subject to such assessments all the real property in the District, including the operative real property of public utilities."

See, also:

City of Inglewood v. County of Los Angeles (1929), 207 Cal. 697, 700.

Under the provisions of the Political Code of California, "every tax due upon real property is a lien against the property assessed;" (§3718) "every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all property of the delinquent; and the judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof;" (§3716) and the lien for taxes attaches "as of the first Monday of March in each year" (§3718). Taxes on real property may be paid in two installments, the first becoming due on November 1st and delinquent on December 5th and the last installment being due on January 20th and delinquent on April 20th. (§3746) In June of each year a delinquent tax list is published and the property upon which the taxes thereafter remain unpaid are, by operation

of law, sold to the state and five years thereafter sold at auction to private persons (§§3764, 3765, 3771a). While, under the provisions of sections 3673 to 3682 of the Political Code, a property owner is entitled to a hearing before the County Board of Equalization, yet, as stated in *Brookes v. City of Oakland* (1911), 160 Cal. 423, at 426, which involved a sewer district:

> "* * * At such hearing he would be permitted to show that his property was not subject to taxation for general city purposes, or that the valuation was too high, but there is no provision allowing him to show at that hearing that it was not benefited by the sewer, or that it should not have been included within the sewer district, or that it was not benefited in the same proportion as other property of like value."

In *Londoner v. City and County of Denver* (1908), 210 U. S. 373, this Honorable Court stated the rule, with a lengthy citation of prior decisions to like effect, as follows (p. 385):

> "* * * where the legislature of a state, instead of fixing the tax itself, commits to some subordinate body the duty of determining whether, in what amount, and upon whom it shall be levied, and of making its assessment and apportionment, due process of law requires that, at some stage of the proceedings, before the tax becomes irrevocably fixed, the taxpayer shall have an opportunity to be heard, of which he must have notice, either personal, by publication, or by a law fixing the time and place of the hearing."

The foregoing rule announced in that decision was followed by the Supreme Court of California in *Brookes v. City of Oakland* (*supra*), 160 Cal. 423, 428; and in *People ex rel. Amestoy Estate Co. v. Van Nuys Lighting District of Los Angeles County* (1916), 173 Cal. 792, 798, and recognized in the case of *In re Orosi Public Utility District* (1925), 196 Cal. 43, 51.

At no stage during the process of arriving at a determination of what property shall bear the burden of the obligations of the drainage districts and the amount of the assessment therefor are property owners within the Flood Control District given an opportunity to be heard on whether the drainage district works are of benefit to lands within the Flood Control District, or on the amount of the assessment to be levied. This omission amounts to a denial of due process of law, as pointed out in *Londoner v. City and County of Denver* (*supra*), 210 U. S. 373, 385.

It is therefore apparent that when the determination of whether an assessment for special benefit shall be levied is left to an administrative board as in the case at bar, due process requires that there must be an opportunity given to property owners to be heard on the question of whether any special benefit will accrue to the lands to be assessed, an opportunity which the statute under consideration does not afford them.